IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 23RD MARCH 2005 / 2ND CHAITHRAM 1927

Crl.Rev.Pet.No. 1257 of 1996()

MP.5468/1996 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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REVN. PETITIONER:

K.F.VARGHESE,
GEM AGENCIES, Y.M.C.A. JUNCTION,
CHITTOOR ROAD, ERNAKULAM,
COCHIN-11, RESIDING AT IRINJALAKUDA.

BY ADV. SRI.P.K.JOSE

RESPONDENTS:

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1. MR.MALLIAH,
   SIVAKUMAR ELECTRICALS,
   KOOVAPPADAM JUNCTION,
   COCHIN-2.

2. THE STATE OF KERALA represented BY
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

R1 BY ADV. SRI.RAJU JOSEPH
R2 BY PUBLIC PROSECUTOR (SHRI. THAVAMONY)

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 23/03/2005, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. HEMA, J.

Crl.R.P.No.1257 of 1996

Dated this the 23rd day of March, 2005

ORDER

The petitioner herein challenges the order dated 18.9.1996 in M.P.No.5468 of 1996 on the file of the Chief Judicial Magistrate, Ernakulam by which the complaint filed by him was dismissed. The petitioner filed a complaint under Section 138 of the Negotiable Instruments Act on 18.6.1996 and the case was posted to18.9.1996 for recording the sworn statement. On that day, according to the petitioner, he could not appear due to a 'Bandh' call by the B.J.P. The petitioner, who was residing at Irinjalakuda, found it difficult to reach the court and his absence was neither wilful or intentional.

2. But the complaint was dismissed as per the order which is quoted below:

"Complainant absent. No application. Complaint is dismissed."

3. It is clear from facts that the court had taken cognizance of the offence and posted the case for proceeding under section 200 of Cr.P.C., to record sworn statement of complainant. Having applied its

mind to proceed under Chapter XV if the Code, the court can dismiss the complaint only under section 203 of Cr.P.C. But, the court has not complied with the requirements under section 203 of the Code before dismissing the complaint.

4. As per Section 203 Cr.P.C., the Magistrate can dismiss a complaint only if he is of the opinion that there is no sufficient ground for proceeding and only if he records in reasons for doing so. A complaint cannot be dismissed for the mere reason that the complainant is absent or that an application is not filed. Even if the complainant is absent and an application is not filed the Magistrate is bound to confirm whether such absence or non-representation is sufficient to form an opinion that there is no sufficient ground for proceeding against the accused.

5. On the facts of this case, it cannot be presumed that a complainant who filed a complaint will not intend to proceed with the case. The failure of the complainant on the date to which the case was posted for recording sworn statement cannot be said to be to protract the trial or to harass the accused. There must be some reason for being absent in the court. Evidently, the day being a `Bandh' day, the complainant would have found it difficult to appear in court due to lack of transportation. The court ought to have borne

in mind such facts. Had the Magistrate applied his mind to the requests under section 203 Cr.P.C. and if he had proceeded to record the reasons for forming an opinion that there is no sufficient ground for proceeding, on the facts of this case, the court would normally not have dismissed the complaint. Instead, the case would have been posted to some other day. In the above circumstances, the court has committed an illegality in not complying with the requests under Section 203 Cr.P.C. and also an impropriety in dismissing the complaint. Hence, , the order under challenge is liable to be set aside.

In the result:

i. The order under challenge is set aside.

ii The lower court is directed to take the complaint on file and proceed in accordance with law.

Petition is allowed.

K. HEMA, JUDGE.

krs.

K. HEMA, J.

Crl.R.P.1257 of 1996

ORDER

23.03.2005